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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY JB DEPUTY

C.O.A. No. \_\_\_\_\_

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

RESPONDENT,

V.

ZACHERY TORRENCE,

APPELLANT.

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PERSONAL RESTRAINT PETITION

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Pro-Se Zachery Torrence  
S.C.C.C.  
191 Constantine Way  
Aberdeen, Wa 98520

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Exhibit #1-Appeals Mandate

Exhibit #2-True and Correct copy of Evidence ID#-18

Exhibit #3-Record of Proceedings 865-894 (Dr.Copeland's Testimony)

## STATUS OF PETITIONER

Petitioner Zachery Torrence is currently in custody at Stafford Creek Correctional Facility. Following convictions out of Clark County Superior Court No. 17-1-01632-2.

On direct appeal Mr. Torrence's petition for review was denied and the mandate was set on February 3, 2021. See C.O.A. No. 52432-5-II (See appendix for mandate). This petition for review is timely within the one-year time parameter as defined in RCW 10.73.090.

## INTRODUCTION

Multimedia tools such as power point presentations offer an effective and engaging method of communicating such information to the jury. However, a prosecutors freedom in using such tools is not without limits. Prosecutors still have a duty to ensure the defendant receives a fair trial.

Here, the prosecution used a anatomical diagram of a pre-adolescent female genitalia. This illustration depicted a gloved hand doing what's called "gentle labial traction" which showed the jury the layers of structures within the youthful genitalia.

Drawing the jury's attention acutely into view by a laser pointer by improper admitted visual evidence. Only to manipulate the audiences perception, by harnessing rapid unconscious or emotional reasoning processes and by exploiting the fact that we do not generally question the rapid conclusions we reach based on visually presented information, was err.

Here, the jury was persuaded by illustrative evidence a minor was damaged by some invasive force. Yet no exam or tangible evidence was presented to support such. The defendant was prejudiced by the emotional impact of the illustrative presentation drawn directly into focus by Dr. Copeland and the prosecutors laser pointer.

#### ASSIGNMENTS OF ERROR

Was the defendant Mr. Torrence prejudiced by power point illustrative presentation of a pre-adolescent female genitalia when it had no relevance to the evidence presented?

#### ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Mr. Torrence received an unfair trial by way of power point illustrative evidence used to visually manipulate the jury's decision making and prejudicing the fundamentals of a fair trial.

#### STATEMENT OF THE CASE

The procedural facts of this case have been provided to this court under C.O.A. No. 52432-5-II. The petitioner now challenges for the first time on appeal through collateral attack P.R.P, prosecutorial misconduct. The state in this case presented evidence into trial, pre-adolescent female genitalia illustrative presentation See RP 870 at '23-24 and RP 871 at '21-24, See Appendix.

Using an expert witness (Dr. Copeland) to describe graphic structures within the illustration. See RP 865-894. The prosecution gave Dr. Copeland a laser pointer and the court room floor to draw the jury's attention acutely into the details of the illustration. See RP 872-73 See appendix.

The illustration brought into focus, also depicted a gloved hand doing what's called "gentle labial traction" which showed the jury the layers of structures within the youthful genitalia. RP 874 at ¶ 9-14 See appendix.

The prosecutor used this inflammatory illustrative presentation in conjunction with Dr. Copeland's aid in exam knowledge. Yet, NO exam on the alleged victim was done. See RP 867 at ¶ 3-6 and RP at ¶ 8-9 See appendix.

This petition is brought timely and purports the misconduct illicit by the prosecution was prejudice and devoid a fair trial. Petitioners requested remedy is remand for new trial.

#### ARGUMENT

Mr. Torrence received an unfair trial by way of power point illustrative evidence, used to visually manipulate the jury's decision making and thus prejudicing the fundamentals of a fair trial.

#### PROSECUTORAL MISCONDUCT:

To prevail on a claim of prosecutorial misconduct the defendant must establish that the prosecutors conduct was both improper and prejudicial in the context of the entire record and the circumstances at trial. State V. Thorgerson, 172 Wn.2d 438, 442 258 P.3d 43 (2011). the burden to establish prejudice requires the defendant to prove that there is a substantial likelihood that the instances of misconduct affected the jury's verdict. State V. Magers, 164 Wn.2d 1744, 191, 189 P.3d 126 (2008).

The failure to object to misconduct constitutes a waiver of the error

unless the misconduct is so flagrant and ill intentioned that it causes an enduring and resulting prejudice. That could not have been neutralized by an admonition to the jury. State V. Russell, 125 Wn.2d 24, 86, 882 P.2d 747 (1994).

The primary question in Torrence's case is whether his convictions must be reversed in light of the power point presentation.

The testimony of Dr. Copeland was introduced during trial. See RP 865-894. During this testimony the presentation introduced illustrative evidence depicting a anatomical diagram of a pre-adolescent female genitalia. Evidence# ID-18 at RP ¶ 18-24.

The prosecution then gives the floor to Dr. Copeland with a laser pointer. Through a series of questions by prosecution the jury's attention is brought into focus with the laser pointer aiming directly at the pre-adolescent anatomy of, internal structures and external structures. Then points to the hymen with the laser pointer describing myths related around the hymen. RP 872-73

The illustration brought into focus also depicted a gloved hand doing what's called "gentle labial traction", which showed the jury the layers of structures within the youthful genitalia.

This presentation is alarming on several levels. First, being that the alleged victim in this case (A.K.A.) never received any physical exam after reporting several years later alleging abuse by Mr. Torrence.

Second, during Dr. Copeland's testimony she was asked in her professional opinion if she would have recommended an exam, she stated "yes". RP 888 ¶ 17-24. Dr. Copeland also stated that <sup>in</sup> these types of cases, "it's the norm is to still have a normal exam". RP 876 ¶ 17.

Third, yet in this case the normal procedure was not adhered to. No exam was conducted by this doctor or any doctor of any type in regards to this case. RP 867 ¶ 3-6, RP 882 ¶ 8-9.

Here, it is true the defendant must prove prejudice to prevail with such argument. Prejudice means a substantial likelihood that the misconduct affected the jury verdict. In Re of Glasmann, 175 Wn.2d 696, 704, 286 P.3d 673 (2012). A defendant who does not object to improper conduct at trial must demonstrate on appeal that the err was so flagrant and ill-intentioned that an instruction would not have cured the prejudice. Glasmann, 175 Wn.2d at 704, 286 P.3d 673.

In this case the only substantive evidence at trial identifying Mr. Torrence as the perpetrator was the testimony of A.K.A. Here, A.K.A testified about incidents that had allegedly happened during four separate occurrences. The evidence however, was extremely limited and vague. 3RP at 395-96, See also C.O.A No. 52432-5-II, where on direct appeal Torrence raised "insufficient evidence to establish he committed the offenses alleged" Id at pg 42-47.

There his appellate attorney argued the jury was given absolutely no evidence upon which it could determine beyond a reasonable doubt that any molestation or sexual abuse took place in the manner required by the jury instructions. Id at pg.45 ¶ 1-3. Which there he also stated there was no physical examination of A.K.A and no physical evidence whatsoever. Instead, the entirety of the states case rested on the accusation made literally years after the alleged offenses.

In retrospect, a petitioner claiming insufficient evidence to support a conviction. then looking into the record and the presentation of

graphic illustrations not supported by any evidence. Appears more persuasively now that they were used to inflame passion and prejudice from the jury because minimal evidence existed.

While the prosecutor is entitled to draw the jury's attention to admitted evidence, these illustrations as presented in Evidence #Id-18 served no legitimate purpose. The prejudicial effect could not have been cured by a timely objection and this court should agree it cannot conclude with any confidence that Torrence's convictions were the result of a fair trial.

Consistent with both long standing precedent and some of the most recent decisions following: In Re of Glasmann, 175 Wn.2d 696, 286. In another power point case issue, Walker, the court noted: [The prosecutor's duty is to seek justice, not merely convictions. We have had numerous occasions to point out the dual roles of a prosecutor." A prosecutor must enforce the law of prosecuting those who have violated the peace and dignity of the state by breaking the law." State V. Monday, 171 Wn.2d 667, 676, 257 P.3d 551 (2011)(citing State V. Case, 49 Wn.2d 66, 70-71, 298 P.2d 500 (1956)(quoting People V. Fielding, 158 N.Y 542, 547 53 N.E. 497 (1899))). At the same time, a prosecutor "functions as the representative of the people in quasijudicial capacity in search for justice." Id]

Following Glasmann and Walker, this court has reversed a number of convictions involving similar power point presentations by prosecutors, including in State V. Hecht, 179 Wash.App. 497, 319 P.3d 836 (2014), and State V. Fedoruk, 184 Wash.App. 866, 339 P.3d 233 (2014), as well as unpublished opinions.



The prosecutor in the present case did not make the mistake of superimposing the words "guilty" over a photograph of the defendant or modifying exhibits with superimposed text. But under Walker and Glasmann the potential prejudice of a slide presentation does not arise solely from the alteration of exhibits.

The broader proposition is that slide shows may not be used to inflame passion and prejudice. In Walker, the slide show "appealed to passion and prejudice by juxtaposing photographs of the victim with photographs of Walker and his family. some altered with the addition of inflammatory captions and superimposed text.

Also the court in Salas had noted the same flaw that illustrations inflamed passion and prejudice. The Salas court noted: "The captions reinforce the visual contrast. They evoke high school stereotypes. Lopez was a musician, whereas Salas played football and was once in a fight club. Which type of person was more likely to initiate a fight? Salas was an outdoorsman, while Lopez was a customer service representative. Which type of person was more likely to use a knife?" State V. Salas, 1 Wn.App 931, 408 P.3d 393 (2018).

The Salas court elaborated on power point slides should not be used to communicate to the jury a covert message that would be improper if spoken aloud. Id.

In the case at hand it is without question Torrence's jury received some form of subliminal or covert message through the illustration. The states questioning regarding force and damage resulting from sexual abuse was solely based on the premise Mr. Torrence violated the young child, caused trauma to the genitalia and thus an exam was offer of

proof.

Yet no exam was done on the alleged victim in this case on A.K.A. So the offer of proof from Dr. Copeland and exaggeration of visual affects were highly prejudicial to a case where no physical evidence existed, only vague testimony alleging the acts took place years prior.

In this case the inquiry is not whether there was sufficient evidence to convict. Rather, the question is whether the prosecutors comments deliberately appealed to the jury's passion and prejudice and encouraged the jury to base the verdict on improper argument rather than on properly admitted evidence. *Glasmann*, 175 Wn.2d 696, 286 P.3d 673 (2012)(quoting *Salas*, 1 Wn.App 931, 408 P.3d 383 (2018) courts opinion at ¶ [36-37].

Because visual arguments "manipulate audiences by harnessing rapid unconscious or emotional reasoning processes and by exploiting the fact that we do not generally question the rapid conclusions we reach based on visually presented information." *Glasmann*, 175 Wn.2d at 708, 286 P.3d 673, quoting L.A. Jewel, Through a glass Darkly: Using Brain and Visual Rhetoric to gain a Professional Perspective on Visual Advocacy, 19 S.Cal. INTERDISC. L.J 237, 289 (2010).

"People tend to believe what they see and will not step back and critically examine the conclusions they reach, unless they are explicitly motivated to do so." *Glasmann*, 175 Wn.2d at 709, 286 P.3d 673, quoting Jewel, at 293.

Thus, the alacrity by which we process and make decision based on visual information conflicts with a bedrock principle of our legal system that reasoned deliberation is necessary for a fair justice

system.Id

The risk of swaying the jury through use of prejudicial imagery is perhaps highest during closing arguments. Although here in Torrence's case it came through the guise of Dr.Copeland's testimony an expert witness who provides exams on sexual abuse victims.

The prosecution used it's questioning to portray a sexual crime had happened. Asking Dr.Copeland "to point out the parts of the female anatomy as well as what parts would be examined in a sexual assault type of exam?" RP 872 ¶ 7-10

Also asking Dr.Copeland, "are you familiar with any studies regarding how often physical evidence of sexual abuse-including instances of penetration will leave physical evidence?" RP 875 ¶ 8-10

Prosecutions questions here evolve, Q: "So doctor in terms of the anatomy of the-the female genital organ is it possible for penile/vaginal sexual intercourse to occur between an adult male and an eleven year old pre-pubescent female?" RP 878 ¶ 14-17 Q: "would you expect any-you know type of injury or anything like that to occur in that situation?" RP 878 ¶ 19-20

Q: "So lets talk about each of those circumstances. If it did not go past the hymen what if any kind of injury might you expect in the short term?" RP 879 ¶ 3-5

Q: "How long would you expect those types of injuries to persist?" RP 880 ¶ 10-11

Q: "So would pain during the actual sexual intercourse be somewhat expected?" RP 880 ¶ 16-17

Q: "What about bleeding afterwards?" RP 880 ¶ 19

Q: "What about pain with urination afterwards?" RP 880 ¶ 21.

In this case, the use of highly inflammatory images unrelated to any specific count was misconduct that contaminated the entire proceedings. The prosecutors unessential argument announced to the jury that the defendant was intrinsically guilty.

Highly prejudicial images may sway a jury in ways that words cannot. See State V. Gregory, 158 Wn.2d 759, 866-67, 147 P.3d 1201 (2006). Such imagery, then, may be very difficult to overcome with an instruction. Id.

It is also well established that a prosecutor cannot use his or her position of power and prestige to sway the jury and may not express an individual opinion of the defendant's guilt, independent of the evidence actually in the case.

The commentary on American Bar Association Standards for Criminal Justice Std. 3-5.8 Emphasizes: [The prosecutors argument is likely to have significant persuasive force with the jury. Accordingly, the scope of argument must be consistent with the evidence and marked by the fairness that should characterize all of the prosecutors conduct. Prosecutorial conduct in argument is a matter of special concern because of the possibility that the jury will give special weight to the prosecutors arguments, not only because of the prestige associated with the prosecutors office but also because of the fact finding facilities presumably available to the office.] Glasmann, 175 Wn.2d 696, 704, 286 P.3d 673 (2012).

The court in this case should find that no evidence supported the prosecutions position to offer graphic visual effects to the jury. The

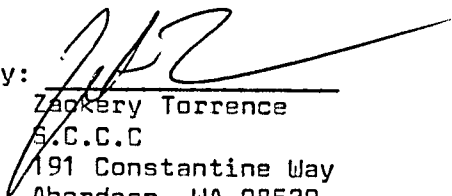
prejudice was delivered from this err as it may have contaminated the mental conscious whether the victim was actually harmed, no exam supported the testimony and presentation offered by the state in this matter. This court should find reversal is warranted and the remedy is re-trial.

#### CONCLUSION

Because the state erred in tainting the trial with graphic visual evidence not supported by the record, this err was of Constitutional magnitude which deserves reversal and remand for re-trial. Consistent with the above mentioned court opinions this case should also follow.

The petitioner respectfully request this court to remand for a new trial.

Dated this 28th day of September, 2021

Submitted by: 

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S.C.C.C

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EXHIBIT -#1

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2/17/2021  
BY SUSAN L. CARLSON  
CLERK

## THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ZACKERY CHRISTOPHER TORRENCE,

Petitioner.

No. 99206-1

**AMENDED  
ORDER**

Court of Appeals  
No. 52432-5-II

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu, and Whitener (Justice Johnson sat for Justice Madsen), considered at its February 2, 2021, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 3<sup>rd</sup> day of February, 2021.

For the Court

  
CHIEF JUSTICE

EXHIBIT -#2



**A** Normal prepubertal female genitalia

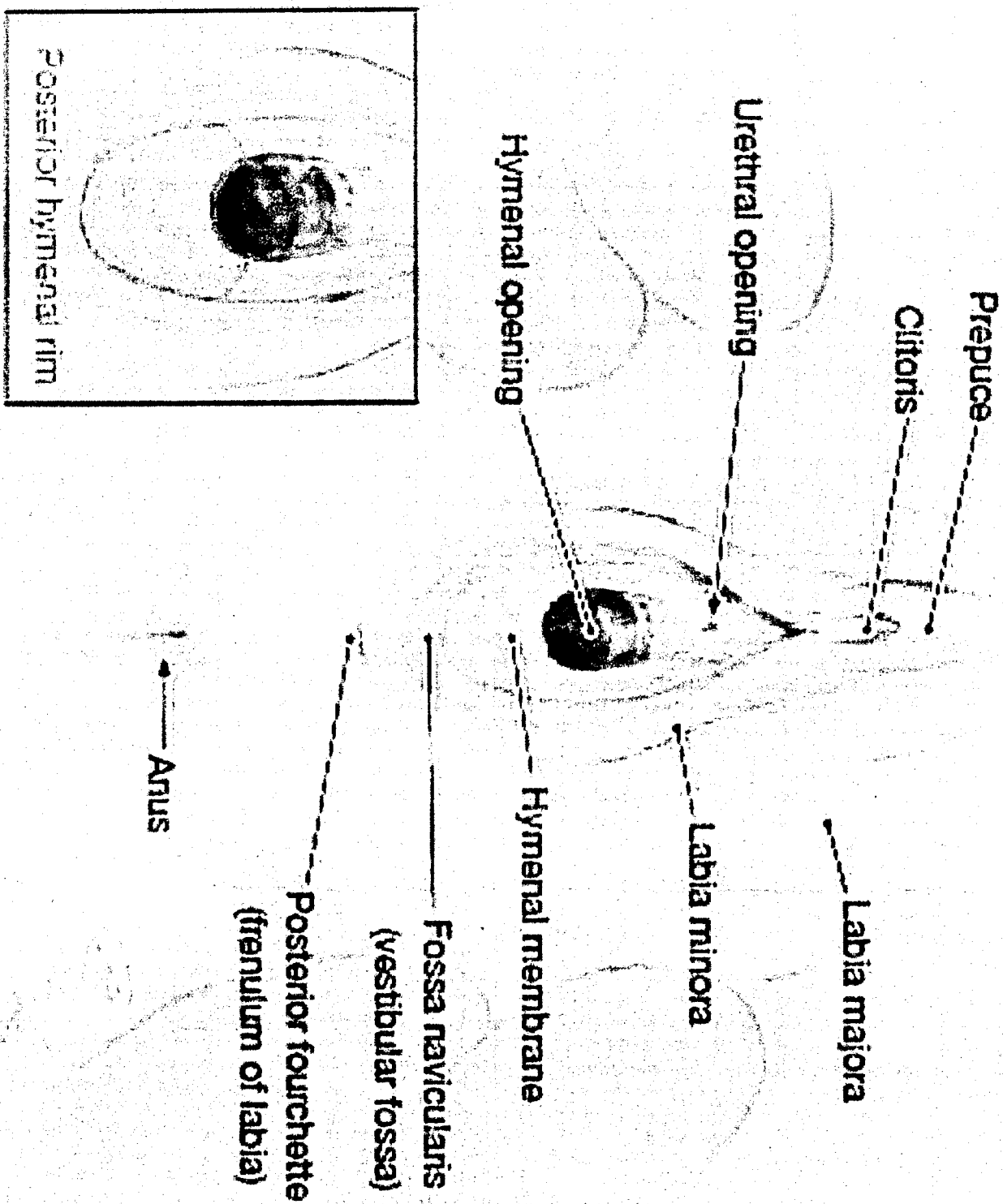


EXHIBIT -#3

1 Clerk: Court is now in session.

2 Judge: Thank you. Please take your seats. Good afternoon.

3 CH: Good afternoon.

4 Judge: All right. Are the parties ready for the jury?

5 CH: Yes.

6 BW: Yes.

7 Judge: All right.

8 BW: I - I'm trying to remember if there was an issue  
9 regarding Brian Alexander - that we've still got the - we kind of  
10 have the same issues and I - I think we're clear on Brian  
11 Alexander.

12 CH: There was one thing that counsel was going to do an Offer  
13 of Proof on - I don't remember what it was.

14 Judge: Okay. I'll take a look at that. You know - I've got the  
15 Motions up here - Motions in Limine. All right. But we're going  
16 with -

17 CH: I have Dr. Copeland first.

18 Judge: - Dr. Copeland first?

19 BW: Thank you.

20 Judge: All right. Katie can you bring the jury in please?

21 CH: Your Honor - I think Your Honor may have resolved that  
22 issue already. It might have been in regards to whether their -  
23 the assault -

24 BW: Yeah.

25 CH: - would come in or not for any -

1 Judge: Um-hum. The assault by?  
2 CH: - if it was something other than that we should - but if  
3 that was the reason then obviously we don't.  
4 Judge: Okay. Did you hear that Mr. Walker?  
5 BW: It was - you know - on the assault. Yes I believe that's  
6 correct.  
7 CH: It - it might have been - if it was then we don't need to  
8 do one. If it was something else -  
9 BW: Because that - that's already in. So -  
10 Jury returns to the courtroom.  
11 Judge: All right. Thank you members of the jury. Mr. Hayes?  
12 CH: State calls Dr. Copeland.  
13 Judge: Good afternoon.  
14 KC: Good afternoon.  
15 Judge: Do you swear or affirm any testimony you give today will  
16 be the truth, the whole truth and nothing but the truth?  
17 KC: I do.  
18 Judge: Thank you. Please take the seat. Would you please state  
19 your full name and spell your name for the record?  
20 KC: Kimberly Copeland. C O P E L A N D.  
21 Judge: Thank you. Your witness Mr. Hayes.  
22 **DIRECT EXAMINATION OF KIMBERLY COPELAND**  
23 Q: Doctor how are you currently employed?  
24 A: I'm employed as the child abuse pediatrician at Legacy  
25 **DIRECT EXAMINATION OF KIMBERLY COPELAND**

DIRECT EXAMINATION OF KIMBERLY COPELAND

Health Systems.

Q: Before I go any further did you actually do any type of examination in regards to this case?

A: No I did not.

Q: You're just here to give general testimony?

A: Yes.

Q: So in your current employment position what are your job duties?

A: I see any kids from the time that they're born until they're eighteen years old for concerns of any type of abuse or neglect. So physical abuse, sexual abuse or any type of not meeting their basic needs.

Q: So pediatrics - would that be your medicine specialty?

A: Yes.

Q: And what exactly does pediatrics mean?

A: Pediatrics is the care of children from the time of their birth up until their eighteenth birthday.

Q: Doctor where did you go to college?

A: Willamette University.

Q: What was your major?

A: Biology.

Q: And did you go to medical school?

A: Yes.

DIRECT EXAMINATION OF KIMBERLY COPELAND

1 DIRECT EXAMINATION OF KIMBERLY COPELAND

2 Q: Where was that?

3 A: At Oregon Health Sciences in Portland, Oregon.

4 Q: How many years was medical school?

5 A: Four.

6 Q: And what exactly does medical school consist of?

7 A: Medical school consists of two years in - at least when I

8 did it - they've changed it around a little bit now - but two years

9 in classroom doing basic science study.

10 And then two years of clinical rotation through all

11 different specialties to actually apply what you've learned in the

12 first two years.

13 Q: What year did you graduate from medical school?

14 A: 1991.

15 Q: What did you do after you graduated from medical school?

16 A: I did a pediatric residency at Vanderbilt University in

17 Nashville.

18 Q: What is a residency?

19 A: A residency is when you choose a specific area of

20 medicine to specialize your training in and get further education.

21 For me my choice was pediatrics so again the care and well-being of

22 children.

23 Q: So what did you do in your pediatric residency exactly?

24 A: We ha - it was three years long and it's three clinical

25 DIRECT EXAMINATION OF KIMBERLY COPELAND

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2 years doing rotations through all different types of pediatric  
3 medicine. So cardiology, pulmonology, general pediatrics,  
4 emergency medicine - just all of the different areas where one  
5 needs to know about the care and well-being of children.

6 Q: After your residency did you engage in any other type of  
7 education or practice regarding your expertise in pediatrics?

8 A: Yes. I did an additional training program - it's called  
9 a fellowship and that's where you further - within your area of  
10 medicine - decide on one of those areas.

11 And I chose emergency medicine. I did a two year  
12 additional training working only in emergency rooms for emergencies  
13 and acute care of children.

14 Q: What does acute care mean?

15 A: When they present with an illness or something as opposed  
16 to just well checks. So I was taking care of kids when they had  
17 something that was emergent at that time - whether it be illness or  
18 an injury that needed care.

19 Q: So where - other than the residency and the fellowship  
20 have you worked anywhere else in regards to working with kids?

21 A: I - after the residency and fellowship I worked for close  
22 to eighteen years as a pediatric emergency medicine attending.

23 And that was both in Birmingham, Alabama where I had done  
24 my fellowship and then I came to Oregon in 1999 and worked in that

25 DIRECT EXAMINATION OF KIMBERLY COPELAND

1 DIRECT EXAMINATION OF KIMBERLY COPELAND

2 capacity until 2011.

3 Q: What did you begin doing in 2011?

4 A: In 2011 I transitioned from the emergency medicine

5 position to the current position that I am in which is at the

6 Legacy Salmon Creek Child Abuse Clinic.

7 Q: So do you see kids for what's known as a sexual assault

8 exam?

9 A: Yes.

10 Q: What - in terms of physical examination what do you do in

11 a sexual assault exam?

12 A: So it depends on the practice setting where you're seeing

13 the child as just - as far as the extent of the exam is. It's

14 different in the emergency room versus clinic.

15 In the clinic it's a full head to toe exam - just like

16 you would do at any time that a child was seen. And then it also

17 includes a genitalia/urinary exam as part of that exam.

18 Q: I'm handing you what's been marked as Identification

19 Number 18. Does that appear to be an anatomical diagram of

20 something?

21 A: Yes.

22 Q: What does that appear to be?

23 A: It appears to be a anatomical diagram of a pre-adolescent

24 female genitalia.

25 DIRECT EXAMINATION OF KIMBERLY COPELAND



1 DIRECT EXAMINATION OF KIMBERLY COPELAND

2 Q: What do you mean when you say "pre-adolescent" female?

3 A: So pre-adolescent meaning prior to having developed  
4 estrogen and having the changes that go along with puberty.

5 Q: And what ages can that occur in a female?

6 A: It can be - it can really start anywhere around nine - it  
7 just depends on genetics as well as each individual child. But it  
8 can start from nine on up to the teen years.

9 Q: Would the occurrence of a - a female pir - first period  
10 have any signal in regards to whether they're considered pre-  
11 adolescent or not?

12 A: Yes. So once kids start their period they're considered  
13 to be into the adolescent time period.

14 Q: So everything before that would be considered pre-  
15 adolescent?

16 A: Yes.

17 Q: Okay. Would this diagram assist you in describing the  
18 female anatomy as well as what is looked at when you do a sexual  
19 assault exam?

20 A: Yes.

21 Q: State would submit ID 18 for illustrative purposes only.

22 BW: No objection.

23 Judge: 18 is admitted for illustrative purposes.

24 Q: Permission to publish Your Honor?

25 DIRECT EXAMINATION OF KIMBERLY COPELAND

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2 Judge: Granted.

3 Q: So Doctor what I'm going to have you do is to have you  
4 just come to where I was just standing and I'm going to give you a  
5 laser pointed and ask you some questions.

6 A: Oh okay.

7 Q: Just go about the layout of the courtroom. You can come  
8 on this side. That way you don't - yeah. Now Doctor can you point  
9 out the parts of the female anatomy as well as what parts would be  
10 examined in a sexual assault time - type of exam?

11 A: So all of this anatomy that you're seeing - this whole  
12 area here is called the vulva and incorporates both the internal  
13 structures and the external structures. All of these are looked at  
14 when I do a sexual assault exam.

15 I'm - when I'm doing the exam I'm looking for any  
16 indication that there might be some sort of injury or any sort of  
17 congenital abnormality or any type of infection. And so I'm  
18 looking at each of these structures individually.

19 The ones that I focus on the most and just to sort of  
20 give an outline of what I'm looking at - the labia majora are the  
21 larger skin tissues or sort of skin pads on each side of the - this  
22 area for a female.

23 The internal structures are the labia minora and again  
24 some people refer to them as a smaller size of the lips if you will

25 DIRECT EXAMINATION OF KIMBERLY COPELAND

1 DIRECT EXAMINATION OF KIMBERLY COPELAND  
2 of the outside structures.  
3 And then the area that gets a lot of attention in sexual  
4 assault exams is the hymen. And that's this area of tissue right  
5 here and there's a lot of myths around the hymen.  
6 People think of the hymen as being a cover over the  
7 vaginal opening and something that ends up being damaged or broken  
8 or popped if you will when there's a sexual assault.  
9 And what's important to understand is that the hymen is  
10 actually a collar of tissue that goes around the vaginal opening.  
11 It's not a cover. It's a - just simply a collar tissue that's  
12 there.  
13 And then just looking at the area overall for any sort of  
14 bruising or petechial and again you'll sometimes see congenital  
15 anomalies that have absolutely nothing to do with why I'm seeing  
16 the patient but they may not have had that detailed an exam before.  
17 Q: Thanks Doctor. You can -  
18 A: Okay.  
19 Q: - return to the witness stand. And just - I'm looking at  
20 that picture Doctor is it possible for something to penetrate the  
21 labia minor lips and yet not go past the hymen?  
22 A: Yes.  
23 Q: So there's some kind of - amount of space in between?  
24 A: Yes. And that's one thing that I didn't remember to  
25 DIRECT EXAMINATION OF KIMBERLY COPELAND

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2 point out. And it's hard to tell from these diagrams but there is

3 an internal - or I'm sorry - external to internal depth with these

4 structures with the labia majora being the most external.

5 Then you come in just a little bit from that and you have

6 labia minora. And then in even further is the hymen. So the hymen

7 is not a structure that's just right out there - visible or

8 accessible from the outside.

9 Q: And in the picture we just looked at there appeared to be

10 gloved hands and - and what are they doing - just -

11 A: The gloved hands are doing what's called gentle labial

12 traction. And the reason that that's necessary is it's literally

13 just moving the labia out of the way to be able to see the next

14 couple layers of structures that are present there.

15 Q: And so - this might be obvious but I skipped over it -

16 are you licensed to practice in Washington or any other state?

17 A: Yes. Washington and Oregon.

18 Q: What did you have to do to become licensed?

19 A: You go through a certification process of showing your

20 credentials and the training that you've had and you are issued

21 your initial license.

22 And then once you are licensed to practice in a state you

23 have different requirements as far as needing to show continuing

24 education as well as continuing clinical practice.

25 DIRECT EXAMINATION OF KIMBERLY COPELAND

1 DIRECT EXAMINATION OF KIMBERLY COPELAND

2 Q: So who exactly is your boss?

3 A: My boss is the medical director of pediatrics at Legacy

4 Randall Hospital.

5 Q: So is law enforcement or Prosecutors are - do they get to

6 tell you what to do?

7 A: No.

8 Q: So are you familiar with any studies regarding how often

9 physical evidence of sexual abuse - including instances of

10 penetration - will leave physical evidence?

11 A: Yes.

12 Q: Are these studies published in medical journals?

13 A: Yes.

14 Q: Okay. Subject to peer review by other doctors?

15 A: Yes.

16 Q: Are the methods result in conclusions of the studies

17 you're speaking of generally accepted in the scientific community?

18 A: Yes.

19 Q: What were the overall findings in these studies?

20 A: The studies have been done over two decades and ever

21 since these exams - sexual assault exams started to incorporate

22 digital photography there was the ability to take photos of exams

23 and then have those peer reviewed among physicians who are doing

24 this work.

25 DIRECT EXAMINATION OF KIMBERLY COPELAND

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2 And what was found was that a lot of things that were  
3 initially thought to be findings of sexual assault were actual  
4 normal variants that you could see in girls and older adolescents  
5 that they would have had - that kids had that weren't abused.

6 And so over the twenty years it became evidence that  
7 there were very few things that are actual findings of sexual  
8 assault. And those are limited to just two or three things.

9 And so these studies have shown that actually even after  
10 an assault which includes penetration a very limited number of kids  
11 will later have findings on their exam that give any indication  
12 that penetration occurred.

13 And that number is four to five percent. So the saying  
14 is it's normal to be normal meaning that the expectation is  
15 oftentimes that the exam is going to be normal no matter how much  
16 penetration occurred or how many time the penetration occurred.  
17 It's the norm is to still have a normal exam.

18 Q: How can that be Doctor?

19 A: So it can be for a few different reasons. It can be that  
20 there - the injury that occurred at the time of the sexual assault  
21 was such that it healed completely and didn't leave any scar or any  
22 residual finding of the injury that was present.

23 It could be that the assault that occurred was of a  
24 nature that didn't cause injury to begin with or if it did cause

25 DIRECT EXAMINATION OF KIMBERLY COPELAND

1 DIRECT EXAMINATION OF KIMBERLY COPELAND

2 injury it was minor enough that it healed very quickly even before  
3 you would see it in an exam a few days later. Because minor  
4 injuries to this area can heal very quickly.

5 If you think about - it's a mucosal surface - the  
6 structures that we were just talking about in the diagram and so  
7 the easiest comparison for that structure is the inside of your  
8 mouth.

9 And we've all bit the inside of our mouths and you know  
10 how annoying it is when it happens but it heals very quickly and  
11 you would never know the next morning when you get up that it  
12 happened. And that's very similar for this area of the body.

13 That mucosa has the same ability to stretch and the same  
14 ability to heal quickly. And so that can certainly contribute to  
15 why you would have a normal exam later - even if an assault did  
16 occur.

17 Q: So that part of the female body heals differently than  
18 say normal surface skin?

19 A: Yes.

20 Q: And do those - those studies you talked about - did any  
21 of them take a sampling size of females that were known to have had  
22 penal/vaginal intercourse?

23 A: Yes. There is one study in particular that is the - the  
24 subject of the study is a group of teenaged girls that were

25 DIRECT EXAMINATION OF KIMBERLY COPELAND

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DIRECT EXAMINATION OF KIMBERLY COPELAND

pregnant. And so you know there's been penile/vaginal intercourse.

And even within that study the number was very limited that had any sort of findings that you could attribute on their exam to having had penetration past their hymen.

Q: So the four to five percent expectancy of potential evidence is that including - you know - all types of penetration - with a finger - penis - something else?

A: Yes.

Q: And is that including instances of force or non-force -

A: Yes.

Q: - so to speak?

A: Yes.

Q: So Doctor in terms of the anatomy of the - the female genital organ is it possible for penile/vaginal sexual intercourse to occur between an adult male and an eleven year old pre-pubescent female?

A: Yes.

Q: Would you expect any - you know - type of injury or anything like that to occur in that situation?

A: It would depend on how penetration is defined. If it is penetration like we talked about between the labia majora and labia minora that was to the level of the hymen but not past the hymen you may have a different set of symptoms and findings than you

DIRECT EXAMINATION OF KIMBERLY COPELAND



1 DIRECT EXAMINATION OF KIMBERLY COPELAND

2 would if there was penetration beyond the hymen.

3 Q: So let's talk about each of those circumstances. If it  
4 did not go past the hymen what - if any - kind of injury might you  
5 expect in the short term?

6 A: You could - again it's - each case is dependent on the  
7 type of force that was used - the type of - if there was any - any  
8 sort of lubrication used or anything like that to assist in what  
9 was going on.

10 But if you have - the hymen prior to estrogen being in  
11 the body as you would see when they hit adol - when the girls hit  
12 adolescent that structure is very, very sensitive.

13 So even if you have penetration that is between the labia  
14 majora and labia minora but comes in contact with the hymen it can  
15 be very, very painful. And that pain is because the hymen is not  
16 estrogenized and it is very sensitive.

17 So you could have pain. You could have external  
18 bruising, bleeding. You could have - also with that type of  
19 penetration - which is between the labia - you get a lot of  
20 friction over the urethra and it's common to have burning with  
21 urination because you're getting - if you will - micro abrasions of  
22 that skin.

23 So then you have acid urine going over that and that's  
24 painful. So those are the types of things that I will ask about to

25 DIRECT EXAMINATION OF KIMBERLY COPELAND

1 DIRECT EXAMINATION OF KIMBERLY COPELAND

2 know if those occurred when kids are describing penetration to me.

3 If you have deeper penetration you then open up to

4 whether you actually have injury to the hymen and bleeding

5 associated with that, bruising associated with that, broken blood

6 vessels which we call petechial associated with that.

7 And then again you can have soreness related to that

8 depending on the factors of the penetration and the force used and

9 that sort of thing.

10 Q: How long would you expect those types of injuries to

11 persist?

12 A: It depends on the nature of them to start with. If

13 they're significant in the beginning they can last for a number of

14 days. They can sometimes last longer than that. It really depends

15 on how significant the injury was to begin with.

16 Q: So would pain during the actual sexual intercourse be

17 somewhat expected?

18 A: Yes.

19 Q: What about bleeding afterwards?

20 A: Yes.

21 Q: What about pain with urination afterwards?

22 A: Yes.

23 Q: Nothing further.

24 Judge: Thank you. Cross examination Mr. Walker?

25 BW: Thanks Your Honor.

CROSS EXAMINATION OF KIMBERLY COPELAND

Q: Dr. Copeland there's a difference - a difference in - in injury to the hymen, correct? There's a minor versus a - a complete transection, is that right?

A: Yes.

Q: And the - now the cla - the complete transection is where it tears all the way through the base and that does not heal?

A: Correct. If you're seeing a transection that in and of itself means that the hymen did not heal back to its prior state.

Q: Now a - a child - let's say - who has a - a - let's say it's a pre-pubical (ph) hymen - it's less estrogenized, is that correct?

A: Yes.

Q: And - and that would mean that it's not as elastic?

A: Yes.

Q: So more likely to tear if they're young, is that correct?

A: Not necessarily. Less likely to stretch and dilate in that sense. But I don't know that it's necessarily more likely to tear than a hy - an estrogenized hymen can tear as well.

Q: Are you not aware of any studies that talks about that?

A: I'm aware of studies that talk about the - that it's normal to be normal after different types of penetration.

Q: Well wouldn't it follow that if it's not an elastic - not as stretchy that it's more likely to have a transection?

CROSS EXAMINATION OF KIMBERLY COPELAND

1 CROSS EXAMINATION OF KIMBERLY COPELAND

2 A: I have not seen anything that specifically addresses the  
3 likelihood of transection based on their cannor (ph) stage or their  
4 pre-pubescent person's post-pubescent.

5 Q: Have you ever looked for an answer to that?

6 A: No. I've read several articles but I have not seen that  
7 referenced directly.

8 Q: Now of course you did not examine this particular girl?

9 A: That's correct.

10 Q: And so you're not aware that anybody did with regard to  
11 this matter, is that correct?

12 A: Yes.

13 Q: And so you wouldn't have any idea as to what her cannor  
14 stage was at the time?

15 A: Correct.

16 Q: And if there were any kind of penetration since by a  
17 child - it could be what's called - I think it's called vulvar  
18 coitus, is that right?

19 A: Yes.

20 Q: And that means basically that there's not actual  
21 penetration - there's just the sliding between the labia that the  
22 child might perceive as penetration, correct?

23 A: Correct. And that's what I was talking about that that  
24 still has the possibility of coming in touch with the hymen and

25 CROSS EXAMINATION OF KIMBERLY COPELAND

1 CROSS EXAMINATION OF KIMBERLY COPELAND  
2 being very painful.  
3 Q: Sure. But -  
4 A: And -  
5 Q: - but without vaginal penetration?  
6 A: - right.  
7 Q: The - now the only real definitive finding of - of doing  
8 an exam like that and finding a transection would be the  
9 transection itself which would be indicative of actual penetration,  
10 correct?  
11 A: It would - it is indicative of penetration. It's not  
12 indicative unless you are seeing somebody immediately after an  
13 event. You are -  
14 You need to know the history and the timing of the exam  
15 depends on how much you would say about what the transection meant.  
16 Q: But the only finding that would be significant - that  
17 would indicate perhaps that there was trauma would be a  
18 transection, correct?  
19 A: In an exam that was don't later.  
20 Q: Yes.  
21 A: If you were doing the exam immediately after an assault  
22 there would be other findings that would be consistent with that  
23 history.  
24 Q: But if - if someone had their - a transection at age  
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CROSS EXAMINATION OF KIMBERLY COPELAND

eleven and you look at them at age seventeen or eighteen if they had a transection at that age they'd still have it now?

A: If they had - it's going to depend on the - if they've had any re-injury and how the re-injury healed. And it's going to depend on what stage you're seeing it at eleven.

Is it already healed then you now it's completely healed. So I can't just say without knowing more specifics that that's a hundred percent correct.

Q: But a transection will not heal?

A: A transection - but again you don't know the factors - if there's been a re-injury and could a re-injury then give you two new sides to the hymen and could potentially heal. That is separate from what you saw the prior time.

Q: But I guess what I'm saying is if - if you examine a patient and they have a complete transection - a complete transection will not heal, is that correct?

A: A complete transection by - so just to clarify what we're talking about. A complete transection is actually meaning there is missing hymen.

So when we talked about the collar of the hymen - if you think of that collar of hymen like a clock face - there's - in between 4:00 o'clock and 8:00 o'clock is considered the portion of hymen that's most commonly damaged during penetration.

CROSS EXAMINATION OF KIMBERLY COPELAND

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If between 4:00 and 8:00 o'clock there is absence of hymen tissue there's - there is none there and that goes all the way down to the base. So sometimes you'll have little divots where there is still some at the bottom.

But if you truly have none at the base that's what we're talking about as being a complete transection. By definition a complete transection is a hymen injury that has not healed.

So that - in that sense it's true - but in a sense I don't know between an eight year period that you're describing if there had been new injury.

Q: Thank you Doctor. Do you do any research yourself on this subject?

A: No.

Q: Have you written any articles on this subject yourself?

A: No.

Q: Have you contributed to any articles like this?

A: No. My practice is based to clinical medicine.

Q: And in this case you don't have any idea of what this girl's history is in any way, isn't that correct?

A: I know a limited amount of history that we had discussed during the defense interview. But other than that, no.

Q: Okay. Now you say that studies show that it - as perhaps as little as four or five percent of children with past trauma like

CROSS EXAMINATION OF KIMBERLY COPELAND



1 CROSS EXAMINATION OF KIMBERLY COPELAND

2 this will not have any significant findings, is that correct?

3 A: Correct.

4 Q: Okay. How many of those ninety-five percent that are

5 normal - because you say normal is normal - how many of those

6 normal findings are due to false reporting?

7 A: I don't know a percent of that. These were - the studies

8 - a lot of the study designs are based on very well documented

9 either confessions from the Defendant or they're based on a

10 witnessed assault or they're based on a conviction.

11 So they're not just based on a child that at one point in

12 time saying that they were assaulted and an exam being done. So

13 the -

14 Q: But you can't say with any with any certainty what

15 percentage are, in fact false reports from - from that research?

16 A: - no.

17 Q: And that could include - that could include wrongful

18 convictions, couldn't it?

19 A: It could I'm sure - yes.

20 Q: You're not aware of any studies at all that talk about

21 that?

22 A: I'm not.

23 Q: Now based on what you're saying does this mean that a

24 woman can even have a fully intact hymen after childbirth?

25 CROSS EXAMINATION OF KIMBERLY COPELAND



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CROSS EXAMINATION OF KIMBERLY COPELAND

A: I have not - so my practice ends at adolescence. I am not aware of studies looking at hymen structure after delivery. So I can't - and that's going to be variable too - based on the nature of delivery and episiotomy (ph) and no episiotomy.

But I'm not familiar with studies looking at that specifically. I don't know that that study has even been done.

Q: And you don't deal with adults at all?

A: Correct.

Q: Okay. But it's possible for a woman to go through her entire life according to what you say with a fully intact hymen -

A: Yes -

Q: - if she doesn't have kids and doesn't have other injuries for example?

A: - yes.

Q: Okay. You - but you don't know a percentage of adult women out there who have - who have never had kids have a full intact hymen?

A: I don't.

Q: Do you normally - well you - you've - you've testified for the Prosecutor's Office many times haven't you?

A: If they ask me and I have to come, yes.

Q: How many times have you testified for them?

A: I don't know. It's - I've been doing this since 2011.

CROSS EXAMINATION OF KIMBERLY COPELAND

1 CROSS EXAMINATION OF KIMBERLY COPELAND

2 It varies from ten times a year to maybe up to twenty times a year.

3 Q: Okay. So you've probably testified about a hundred times

4 for the Prosecutor's Office at least?

5 A: That would probably be - that's a higher number than I

6 think I have done because I just -

7 Q: Seventy-five?

8 A: - I just keep track of numbers based on defense interview

9 and court all as one number. So the numbers I'm giving you include

10 defense interviews.

11 Q: And you - you testify only for the Prosecutor's isn't

12 that correct?

13 A: No. I've testified for the defense.

14 Q: How many times?

15 A: And it's one time. And I always meet with defense if

16 they ask for my input on something.

17 Q: Was it your decision to not have someone do an exam on

18 this girl?

19 A: No. I was not involved in the triage decision.

20 Q: Okay.

21 A: I don't recall -

22 Q: If you had been involved would you have - would you have

23 recommended an exam?

24 A: - yes.

25 CROSS EXAMINATION OF KIMBERLY COPELAND

1 CROSS EXAMINATION OF KIMBERLY COPELAND

2 Q: Okay. That's all I have. Thank you Doctor.

3 Judge: Redirect examination Mr. Hayes?

4 REDIRECT EXAMINATION OF KIMBERLY COPELAND

5 Q: So at the time of an injury you - say there was an injury  
6 to the hymen that created a complete tear could that heal  
7 completely and not leave any trace?

8 A: Yes. If you're seeing a complete tear prior to healing  
9 having fully happened. You would need to see the patient back and  
10 look again to know if it had fully healed.

11 Q: So could there be a complete tear and then you do an exam  
12 some - a per - a long period later and not even see any trace of  
13 it?

14 A: Not if it was initially a fully healed tear. I would  
15 still expect to see that unless they had had a new traumatic event  
16 that would then change things and you would think about the  
17 subsequent healing and how that might have impacted it.

18 Q: Okay. So does every - not all instances of penetration  
19 are going to create a tear?

20 A: Correct. And not all instances of penetration are going  
21 to create a tear that would later be seen after they have healed.

22 Q: So some - so tears can heal?

23 A: Yes.

24 Q: How many sexual assault exams have you performed in your

25 REDIRECT EXAMINATION OF KIMBERLY COPELAND

1 REDIRECT EXAMINATION OF KIMBERLY COPELAND  
2 time as a pediatrician?  
3 A: Hundreds. Maybe - over a thousand I would guess.  
4 Q: Nothing further.  
5 RECROSS EXAMINATION OF KIMBERLY COPELAND  
6 Q: Doctor with regard to the complete tear that you were  
7 just talking about are you familiar with pain levels when it comes  
8 to that kind of activity?  
9 A: Familiar in what - I'm familiar with patients describing  
10 pain to me and reporting pain, yes.  
11 Q: Okay. And sometimes there's not much pain when there's  
12 even a tear of the hymen, is that correct?  
13 A: In my experience if there has been symptoms of bleeding  
14 and there has been symptoms of a visible tear that has been  
15 associated pain.  
16 Q: Associated pain?  
17 A: Yes.  
18 Q: So sometimes not extreme pain - just pain?  
19 A: I don't know that I can grade it because it's not my  
20 pain. So I don't - and I don't ask people on a scale well what was  
21 your pain.  
22 Q: You don't say on a scale of one to ten what your pain  
23 level?  
24 A: I don't in most cases.  
25 RECROSS EXAMINATION OF KIMBERLY COPELAND

1                                    RE-CROSS EXAMINATION OF KIMBERLY COPELAND

2            Q:            Why not? I thought doctors always did that?

3            A:            I did in the ER - I don't when it's dealing with  
4 someone's hymen and I haven't ever asked that.

5            Q:            Is that not useful information?

6            A:            I don't - I've never really thought about it.

7            Q:            Okay. All right. Thank you Doctor.

8            A:            Um-hum.

9            Judge:       Does that raise anything Mr. -

10                           RE-REDIRECT EXAMINATION OF KIMBERLY COPELAND

11           Q:            Why is it - why does it not matter for your practice of  
12 medicine to know whether there's pain versus whether - what the  
13 pain is on a scale?

14           A:            For me when I'm assessing pain - say for an ankle injury  
15 - it matters to me if I'm thinking about a tendon tear or a sprain  
16 or a fracture.

17                        The level of pain when it occurred, how long it lasted  
18 always have been for me what I'm working on for my differential  
19 diagnosis for their ankle injury.

20                        For me when I ask about the pain with - with the report  
21 of an assault I'm going to do an exam that is going to allow me to  
22 gain the information of knowing what that pain was associated with.  
23 So I just have never -

24                        I'm not generating the same sort of thought process I

25                           RE-REDIRECT EXAMINATION OF KIMBERLY COPELAND

1 RE-REDIRECT EXAMINATION OF KIMBERLY COPELAND  
2 guess in that I am generating a differential diagnosis but I'm not  
3 - there's going to be a tear or there's not going to be a tear or  
4 there's other symptoms that are suggestive of having had a tear  
5 that would heal and I haven't found that the nature of the exact  
6 level of pain is going to contribute to that information.  
7 Q: Nothing further.  
8 RE-RECROSS EXAMINATION OF KIMBERLY COPELAND  
9 Q: Just one follow-up Doctor. Wouldn't the pain level at  
10 least be corroborative of - of the findings that you're making?  
11 A: Again I don't - everyone's pain threshold for everywhere  
12 on their body is different. And there's different types of pain.  
13 Sometimes people are telling me about they're just  
14 feeling pain in that area. They're feeling soreness in that area.  
15 They're feeling the pain with their urination.  
16 They're feeling the pain days after when they couldn't  
17 walk. So there's all sorts of different levels of pain that  
18 absolutely corroborate or don't what they're telling me.  
19 Q: Um-hum.  
20 A: So the pain is important. I've just not found saying on  
21 a scale of zero to ten what was your pain. I haven't found that to  
22 be - I haven't ever even thought to ask that in regards to the -  
23 this type of pain.  
24 Q: Well if a pa - if a patient reports just extreme,  
25 RE-RECROSS EXAMINATION OF KIMBERLY COPELAND

1 RE-RECROSS EXAMINATION OF KIMBERLY COPELAND  
2 unbelievable levels of pain and you see just this pristine hymen  
3 where it looks like nothing has ever passed there before wouldn't  
4 that make you suspicious?

5 A: It depe - I would need the whole history. I would need  
6 to know when I'm seeing them in relation to timing of when this  
7 occurred. I would need to know additional symptoms if they had  
8 those.

9 And what they had in the interim between the time of the  
10 excruciating pain and when I'm seeing them. I can't just bla -  
11 blanket say that it doesn't matter at all or makes me concerned  
12 that it doesn't fit. I'd need more information.

13 Q: Okay. Thanks Doctor.

14 A: You're welcome.

15 CH: Let me open my direct for one question. Well I'll just  
16 ask it.

17 Judge: Go ahead.

18 RE-RE-REDIRECT EXAMINATION OF KIMBERLY COPELAND

19 Q: Doctor in a hypothetical situation where an adult male is  
20 having penile/vaginal sex with a eleven year old pre-pubescent  
21 female would you or would you not expect to potentially see  
22 numbness during that incident?

23 BW: Object to leading question.

24 Q: I - I'll rephrase it.

25 RE-RE-REDIRECT EXAMINATION OF KIMBERLY COPELAND

1 RE-RE-REDIRECT EXAMINATION OF KIMBERLY COPELAND

2 Judge: All right. Objection sustained.

3 Q: In that instance could numbness be experienced?

4 A: Numbness -

5 Q: Feelings of numbness in the genital area.

6 A: - of having no feeling? Is that - I - I'm just want to -  
7 I guess I'd take it in the context - I'm not sure what you mean by  
8 numbness.

9 But what in clinical experience I have heard is when I  
10 try to get specific symptoms from kids that are telling me things  
11 is they're saying I don't know because I just blacked out. I  
12 didn't want to feel it.

13 And so I don't know if that's what you mean by numbness  
14 or you - I don't - I'm not sure what you mean. But I know that  
15 that's what kids describe - that they just can't answer those types  
16 of questions.

17 Q: Okay. Nothing further.

18 RE-RE-RECROSS EXAMINATION OF KIMBERLY COPELAND

19 Q: Well - so let's say it's not emotional blackout numbness.  
20 Let's just say it's just physical numbness?

21 A: Um-hum.

22 Q: Is that - is that something you are - have encountered?

23 A: No. I don't often encounter that. But again I would  
24 want to put it in the context of what they're fully describing -

25 RE-RE-RECROSS EXAMINATION OF KIMBERLY COPELAND



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2021 OCT -5 PM 1:54  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

IN THE COURT OF APPEALS OF WASHINGTON STATE

DIVISION TWO

State of Washington,

*Plaintiff,*

v.

ZACKERY TORRENCE

*Appellant / Defendant.*

Case No. \_\_\_\_\_

MOTION, DECLARATION  
AND PROPOSED ORDER TO  
PROCEED IN FORMA  
PAUPERIS ON APPEAL

**I. MOTION**

Comes now the Appellant pro se, Zackery C. Torrence, and hereby *moves* this Court to allow him to file the accompanying *petition* or appeal without payment of the filing fee.

Defendant brings this action in good faith and lacks sufficient funds to prepay the filing fee. The Defendant's current assets and debts are set forth in the Declaration / Certification below.

Declared to be true and correct under penalty of perjury of the laws of the State of Washington.

Done this 28 day of September, 2021, at Aberdeen, Washington.

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

DOC #: 355318

Stafford Creek Correction Center, Unit:  
191 Constantine Way  
Aberdeen, WA 98520

## II. DECLARATION / CERTIFICATION OF INDIGENCE

I, Zackery C. Torrence, Appellant pro se, certify I am the Appellant in this action and I wish to appeal the judgment that was entered in the above entitled cause. I further certify as follows:

1. That I ☒ do not have any money in checking and/or savings accounts ( ) I have \$ \_\_\_\_\_ grand total in all checking and savings accounts.
2. That I am: ☒ not married ( ) married and my wife's monthly income is: \$ \_\_\_\_\_
3. That I own: ☒ No personal property other than my personal effects.  
☒ Personal property (automobile, money, inmate account, motors, tools, etc) valued at \$ 0.08  
☒ No real property ( ) Real property valued at \$ \_\_\_\_\_  
( ) Stocks, bonds, notes, or other valuables (NOT furniture, clothes or household goods) worth: \$ \_\_\_\_\_
4. That I have the following income: ☒ No income from any source  
( ) Income from **employment**, disability payments, SSI, insurance, annuities, stocks, bonds, interests, dividends, rental payments, etc., in the amount of \$ \_\_\_\_\_ on an average monthly basis.  
I received \$ \_\_\_\_\_ after taxes over the past 12 months. The name and address of my employer is: \_\_\_\_\_
5. That I have: ( ) No debts ☒ Debts in the total amount from all debts owed of \$ 28,000
6. I am without other means to prosecute an appeal and desire that public funds be expended for that purpose.
7. I can contribute the following amount toward the expense of review: \$ 25<sup>00</sup>
8. The following is a brief statement of the nature of the case and the issue sought to be reviewed.

Personal Restraint Petition, Prosecutorial Misconduct  
using power point slide to inflame the jury.

9. I as the court to provide the following at public expense: all filing fees, attorney fees, preparation, reproduction, and distribution of briefs, preparation of verbatim report of proceedings, and preparation of necessary clerk's papers.
10. I authorize the court to obtain verification information regarding my financial status from banks, employers, or other individuals or institutions, if appropriate.
11. I certify that I will immediately report any change in my financial status to the court.
12. I certify that review is being sought in good faith. I declare that all of the above is true and correct under penalty of perjury of the laws of the State of Washington.

Done this 28 day of September, 2021.

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

DOC # 355318

Stafford Creek Correction Center, Unit:  
191 Constantine Way  
Aberdeen, WA 98520

09/21/2021

Department of Corrections

PAGE : 01 OF 01

NMSPRINGER

STAFFORD CREEK CORRECTIONS CENTER

OIRPLRAR

10.2.1.18

**PLRA IN FORMA PAUPERIS STATUS REPORT  
FOR DEFINED PERIOD : 02/28/2021 TO 08/31/2021**

DOC# : 0000355318

NAME : TORRENCE ZACKERY

ADMIT DATE : 09/14/2018

DOB : 11/20/1974

ADMIT TIME : 12:49

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
304.67	60.93	38.81	7.76

STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS  
OFFICE OF CORRECTIONAL OPERATIONS  
STAFFORD CREEK CORRECTION CENTER  
CERTIFIED BY: S. Suthers  
9.21.2021

BY \_\_\_\_\_  
DEPUTY

STATE OF WASHINGTON

2021 OCT -5 PM 1:54

FILED  
COURT OF APPEALS  
DIVISION II